

**Executive Summary – Enforcement Matter – Case No. 43636**  
**TERRILL PETROLEUM CO., INC.**  
**RN101724318, RN101757151 and RN101907335**  
**Docket No. 2012-0428-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Midlake Marina, located at Farm-to-Market Road 3121, Hemphill, Sabine County

Terrill Petroleum, located at Highway 87 North at Rash Street, Hemphill, Sabine County

West Sabine Independent School District, located at Highway 83, Pineland, Sabine County

**Type of Operation:**

Convenience store with retail sales of gasoline, wholesale gasoline facility, and fleet refueling facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** November 2, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$9,050

**Amount Deferred for Expedited Settlement:** \$1,810

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$205

**Total Due to General Revenue:** \$7,035

Payment Plan: 35 payments of \$201 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source (RN101757151):** Yes

**Major Source (RN101724318, RN101907335):** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 43636  
TERRILL PETROLEUM CO., INC.  
RN101724318, RN101757151 and RN101907335  
Docket No. 2012-0428-PST-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** May 17, 2011, February 1, 2012, and February 22, 2012

**Date(s) of NOE(s):** February 1, 2012 and February 22, 2012

***Violation Information***

1. Failed to monitor the underground storage tanks (“USTs”) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility No. 1, and failed to provide proper release detection for the product piping associated with the UST system [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)(B) and TEX. WATER CODE § 26.3475(b) and (c)(1)].
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility No. 2, and failed to provide proper release detection for the product piping associated with the UST system [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)(B) and TEX. WATER CODE § 26.3475(b) and (c)(1)].
3. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility No. 3, and failed to provide proper release detection for the product piping associated with the UST system [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)(B) and TEX. WATER CODE § 26.3475(b) and (c)(1)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent implemented an approved method of release detection for the UST systems at Facility Nos. 1 and 2 on March 12, 2012 and April 3, 2012, respectively, and that Respondent completed the required actions, on May 14, 2012, to place the UST system at Facility No. 3 temporarily out-of-service.

**Technical Requirements:**

N/A

**Executive Summary – Enforcement Matter – Case No. 43636  
TERRILL PETROLEUM CO., INC.  
RN101724318, RN101757151 and RN101907335  
Docket No. 2012-0428-PST-E**

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Jacquelyn Green, Enforcement Division,  
Enforcement Team 1, MC 169, (512) 239-2587; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Gary Baker, President, TERRILL PETROLEUM CO., INC., P.O. Box  
855, Hemphill, Texas 75948  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	6-Feb-2012	<b>Screening</b>	17-Feb-2012	<b>EPA Due</b>	
	<b>PCW</b>	17-Feb-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	TERRILL PETROLEUM CO., INC. (Facility No. 1)		
<b>Reg. Ent. Ref. No.</b>	RN101724318		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	43636	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-0428-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jacquelyn Green
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$50
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Notes: Enhancement for one NOV with dissimilar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$250
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$62  
Approx. Cost of Compliance: \$1,500  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,300
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$2,300
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,300
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$460
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$1,840
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Screening Date 17-Feb-2012

Docket No. 2012-0428-PST-E

PCW

Respondent TERRILL PETROLEUM CO., INC. (Facility No. 1)

Policy Revision 2 (September 2002)

Case ID No. 43636

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101724318

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jacquelyn Green

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 2%

Screening Date 17-Feb-2012

Docket No. 2012-0428-PST-E

PCW

Respondent TERRILL PETROLEUM CO., INC. (Facility No. 1)

Policy Revision 2 (September 2002)

Case ID No. 43636

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101724318

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2)(B) and Tex. Water Code § 26.3475(b) and (c)(1)

Violation Description

Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide proper release detection for the product piping associated with the UST system.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

16 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended from the record review date (February 1, 2012) to the screening date (February 17, 2012).

## Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent submitted documentation on March 12, 2012 that compliance has been achieved.

Violation Subtotal \$2,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$62

Violation Final Penalty Total \$2,300

This violation Final Assessed Penalty (adjusted for limits) \$2,300

# Economic Benefit Worksheet

**Respondent** TERRILL PETROLEUM CO., INC. (Facility No. 1)

**Case ID No.** 43636

**Reg. Ent. Reference No.** RN101724318

**Media** Petroleum Storage Tank

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	17-May-2011	12-Mar-2012	0.82	\$62	n/a	\$62

**Notes for DELAYED costs**

Estimated cost to provide release detection for the USTs and the piping associated with the USTs. The date required is the date of the investigation and the final date is the date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,500

**TOTAL**

\$62





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	26-Mar-2012	<b>Screening</b>	12-Apr-2012	<b>EPA Due</b>	
	<b>PCW</b>	13-Apr-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	TERRILL PETROLEUM CO., INC. (Facility No. 2)		
<b>Reg. Ent. Ref. No.</b>	RN101757151		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	43636	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-0428-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jacquelyn Green
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No adjustment for compliance history.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$500
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$66  
Approx. Cost of Compliance: \$1,500  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,500
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$4,500
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,500
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$900
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$3,600
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Screening Date 12-Apr-2012

Docket No. 2012-0428-PST-E

PCW

Respondent TERRILL PETROLEUM CO., INC. (Facility No. 2)

Policy Revision 2 (September 2002)

Case ID No. 43636

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101757151

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jacquelyn Green

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

Screening Date 12-Apr-2012

Docket No. 2012-0428-PST-E

PCW

Respondent TERRILL PETROLEUM CO., INC. (Facility No. 2)

Policy Revision 2 (September 2002)

Case ID No. 43636

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101757151

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2)(B) and Tex. Water Code § 26.3475(b) and (c)(1)

Violation Description

Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide proper release detection for the product piping associated with the UST system.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

## Violation Events

Number of Violation Events 1

41 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

One quarterly event is recommended from the record review date (February 22, 2012) to the compliance date (April 3, 2012).

## Good Faith Efforts to Comply

10.0% Reduction

\$500

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent submitted documentation on April 3, 2012 that compliance has been achieved.

Violation Subtotal \$4,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$66

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

# Economic Benefit Worksheet

**Respondent** TERRILL PETROLEUM CO., INC. (Facility No. 2)

**Case ID No.** 43636

**Reg. Ent. Reference No.** RN101757151

**Media** Petroleum Storage Tank

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	17-May-2011	3-Apr-2012	0.88	\$66	n/a	\$66

**Notes for DELAYED costs**

Estimated cost to provide release detection for the USTs and the piping associated with the USTs. The date required is the date of the investigation and the final date is the date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,500

**TOTAL**

\$66



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

**DATES**

**Assigned PCW**

26-Mar-2012  
13-Apr-2012

**Screening** 12-Apr-2012

**EPA Due**

## RESPONDENT/FACILITY INFORMATION

**Respondent** TERRILL PETROLEUM CO., INC. (Facility No. 3)  
**Reg. Ent. Ref. No.** RN101907335  
**Facility/Site Region** 10-Beaumont **Major/Minor Source** Minor

## CASE INFORMATION

**Enf./Case ID No.** 43636 **No. of Violations** 1  
**Docket No.** 2012-0428-PST-E **Order Type** 1660  
**Media Program(s)** Petroleum Storage Tank **Government/Non-Profit** No  
**Multi-Media** **Enf. Coordinator** Jacquelyn Green  
**EC's Team** Enforcement Team 1  
**Admin. Penalty \$ Limit Minimum** \$0 **Maximum** \$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

**Subtotal 1** \$2,500

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 0.0% Enhancement **Subtotals 2, 3, & 7** \$0

**Notes** No adjustment for compliance history.

**Culpability** No 0.0% Enhancement **Subtotal 4** \$0

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$250

**Economic Benefit** 0.0% Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$75  
Approx. Cost of Compliance \$1,500  
\*Capped at the Total EB \$ Amount

## SUM OF SUBTOTALS 1-7

**Final Subtotal** \$2,250

## OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

**Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$2,250

## STATUTORY LIMIT ADJUSTMENT

**Final Assessed Penalty** \$2,250

## DEFERRAL

20.0%

Reduction

**Adjustment** -\$450

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

## PAYABLE PENALTY

\$1,800

Screening Date 12-Apr-2012

Docket No. 2012-0428-PST-E

PCW

Respondent TERRILL PETROLEUM CO., INC. (Facility No. 3)

Policy Revision 2 (September 2002)

Case ID No. 43636

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101907335

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jacquelyn Green

**Compliance History Worksheet**

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

Screening Date 12-Apr-2012

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Policy Revision 2 (September 2002)

Case ID No. 43636

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101907335

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2)(B) and Tex. Water Code § 26.3475(b) and (c)(1)

## Violation Description

Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide proper release detection for the product piping associated with the UST system.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

50 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the record review date (February 22, 2012) to the screening date (April 12, 2012).

## Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent submitted documentation on May 14, 2012 that compliance has been achieved.

Violation Subtotal \$2,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$75

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

# Economic Benefit Worksheet

**Respondent** TERRILL PETROLEUM CO., INC. (Facility No. 3)  
**Case ID No.** 43636  
**Reg. Ent. Reference No.** RN101907335  
**Media** Petroleum Storage Tank  
**Violation No.** 1

**Percent Interest** 5.0  
**Years of Depreciation** 15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	17-May-2011	14-May-2012	0.99	\$75	\$75

**Notes for DELAYED costs**

Estimated cost to place the UST system at the Facility temporarily out-of-service . The date required is the date of the investigation and the final date is the date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,500

**TOTAL**

\$75



# Compliance History Report

Customer/Respondent/Owner-Operator: CN600925499 Terrill Petroleum Co., Inc. Classification: AVERAGE Rating: 3.00

Regulated Entity: RN101724318 MIDLAKE MARINA Classification: AVERAGE Site Rating: 3.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 5411

Location: Farm-to-Market Road 3121, Sabine County, Hemphill TX

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: February 27, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 27, 2007 to February 27, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jacquelyn Green Phone: (512) 239 - 2587

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 12/16/2010 (878972)
  - 2 02/01/2012 (951496)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date: 08/20/2010 (849106)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201  
5C THSC Chapter 382 382.085(b)

Description: Failure to perform allowable outdoor burning in an authorized manner.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failure to comply with the general requirements for municipal solid waste.
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600925499 Terrill Petroleum Co., Inc. Classification: AVERAGE Rating: 3.00

Regulated Entity: RN101757151 TERRILL PETROLEUM Classification: AVERAGE Site Rating: 3.01

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 5393

Location: HWY 87 N at Rash Street, Hemphill, TX

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: April 18, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 18, 2007 to April 18, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jacquelyn Green Phone: (512) 239 – 2587

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 02/22/2012(951494)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600925499 Terrill Petroleum Co., Inc. Classification: AVERAGE Rating: 3.00

Regulated Entity: RN101907335 WEST SABINE ISD Classification: AVERAGE Site Rating: 3.01

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 5417

Location: HWY 83

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: April 18, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 18, 2007 to April 18, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jacquelyn Green Phone: (512) 239 - 2587

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 02/22/2012(951495)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TERRILL PETROLEUM CO., INC.  
RN101724318, RN101757151, AND  
RN101907335**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-0428-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding TERRILL PETROLEUM CO., INC. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates the underground storage tanks ("USTs") at the following facilities (collectively referred to as the "Facilities"):
  - a. Midlake Marina ("Facility No. 1"), convenience store with retail sales of gas, located at Farm-to-Market Road 3121 in Hemphill, Sabine County, Texas;
  - b. Terrill Petroleum ("Facility No. 2"), wholesale gasoline facility, located at Highway 87 north at Rash Street in Hemphill, Sabine County, Texas; and
  - c. West Sabine Independent School District ("Facility No. 3"), fleet refueling facility, located at Highway 83 in Pineland, Sabine County, Texas.
2. The Respondent's eight USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 6, 2012 and February 27, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand Fifty Dollars (\$9,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Five Dollars (\$205) of the administrative penalty and One Thousand Eight Hundred Ten Dollars (\$1,810) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Seven Thousand Thirty-Five Dollars (\$7,035) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred One Dollars (\$201) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Respondent to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent implemented an approved method of release detection for the UST systems at Facility Nos. 1 and 2 on March 12, 2012 and April 3, 2012, respectively, and that the Respondent completed the required actions, on May 14, 2012, to place the UST system at Facility No. 3 temporarily out-of-service.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facilities, the Respondent is alleged to have:

1. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility No. 1, and failed to provide proper release detection for the product piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)(B) and TEX. WATER CODE § 26.3475(b) and (c)(1), as documented during an investigation conducted on May 17, 2011 and a record review conducted on February 1, 2012.
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility No. 2, and failed to provide proper release detection for the product piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)(B) and TEX. WATER CODE § 26.3475(b) and (c)(1), as documented during an investigation conducted on May 17, 2011 and a record review conducted on February 22, 2012.
3. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility No. 3, and failed to provide proper release detection for the product piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)(B) and TEX. WATER CODE § 26.3475(b) and (c)(1), as documented during an investigation conducted on May 17, 2011 and a record review conducted on February 22, 2012.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: TERRILL PETROLEUM CO., INC., Docket No. 2012-0428-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facilities' operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director

1/18/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

9-4-12  
Date

Gary Baker  
Name (Printed or typed)  
Authorized Representative of  
TERRILL PETROLEUM CO., INC.

President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.